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OCT 25 2004

In re Application of :
Julie A. Campbell and Lawrence W. Jacobs :
Application No. 10/020,707 :
Filed: December 13, 2001 :
Title: ELECTRICAL TEST PROBE :
FLEXIBLE SPRING TIP :

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition pursuant to 37 CFR §1.78(a)(3), filed February 4, 2004, and supplemental petitions filed both on August 25, 2004 and September 21, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 and 365(c) for the benefit of priority to prior-filed PCT and non-provisional applications set forth in the amendment submitted on August 25, 2004.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR §1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on December 13, 2001. Though the first sentence of the specification as originally filed included a claim for benefit to prior filed provisional application 60/221,716, nonprovisional application 09/895,060, and international application PCT/US01/24017, it failed to identify the relationship of the instant application to the international and nonprovisional applications, and, accordingly, the reference requirement under 37 C.F.R. §1.78(a)(2)(i) was not satisfied. A proper reference to the prior-filed PCT and

nonprovisional applications has now been included in an amendment to the first sentence of the specification following the title, as required by 37 C.F.R. §1.78(a)(2)(ii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed PCT and nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed international and non-provisional applications satisfies the conditions of 37 CFR §1.78(a)(3), the petition is granted.

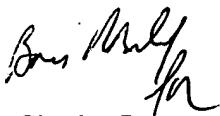
The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Questions pertaining to this application should be directed towards the Office of Patent Publication at (703) 305-8497.

This application is being forwarded to the examiner of Technology Center Art Unit 2833 for appropriate action on the amendments filed August 25, 2004 and September 21, 2004, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to prior-filed PCT Application No. PCT/US01/24017 filed July 30, 2001, and nonprovisional application 09/895,060, filed June 29, 2001.



Charles Pearson
Director of the Office of Petitions
Office of Petitions
United States Patent and Trademark Office